

*PROHIBITED PERSONNEL PRACTICES
WHISTLEBLOWER PROTECTION*



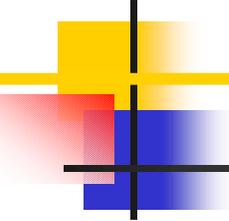
*A GUIDE TO
RIGHTS AND REMEDIES
OF FEDERAL EMPLOYEES
UNDER 5 U.S.C., CHAPTERS 12 & 23*

ELAINE KAPLAN
Special Counsel

U.S. OFFICE OF SPECIAL COUNSEL

TOPICS

5 U.S.C. CHPTRS. 12, 23, 73



U.S. OFFICE OF SPECIAL COUNSEL (OSC)



PROHIBITED PERSONNEL PRACTICES



WHISTLEBLOWER PROTECTION



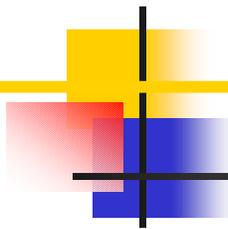
HOW OSC PROCESSES A COMPLAINT



DISCLOSURE UNIT

OFFICE OF SPECIAL COUNSEL (OSC)

5 U.S.C. §§ 1211-19; 5 C.F.R. PART 1800

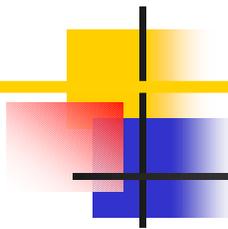


AUTHORIZED TO—

- INVESTIGATE PROHIBITED PERSONNEL PRACTICES AND OTHER ACTIVITIES PROHIBITED BY CIVIL SERVICE LAW, RULE, OR REGULATION
- SEEK CORRECTIVE ACTION ON BEHALF OF INDIVIDUALS WHO ARE THE VICTIMS OF PROHIBITED PERSONNEL PRACTICES
- SEEK DISCIPLINARY ACTION AGAINST AGENCY OFFICIALS WHO COMMIT PROHIBITED PERSONNEL PRACTICES

OFFICE OF SPECIAL COUNSEL (OSC)

5 U.S.C. §§ 1211-19; 5 C.F.R. PART 1800



AUTHORIZED TO —

- PROVIDE A SAFE CHANNEL FOR WHISTLEBLOWER DISCLOSURES BY FEDERAL EMPLOYEES, FORMER EMPLOYEES, AND APPLICANTS FOR EMPLOYMENT
- ADVISE ON AND ENFORCE HATCH ACT PROVISIONS ON POLITICAL ACTIVITY APPLICABLE TO FEDERAL, STATE, AND LOCAL GOVERNMENT EMPLOYEES

PROHIBITED PERSONNEL PRACTICES

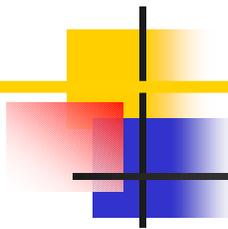
5 U.S.C. § 2302(b)

ELEMENTS:

- COVERED AGENCY
- COVERED POSITION
- COVERED PERSONNEL ACTION
- COMMISSION OF PROHIBITED PERSONNEL PRACTICE

COVERED AGENCIES

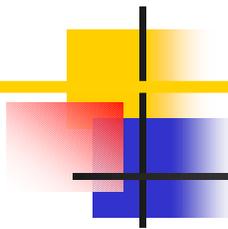
5 U.S.C. § 2302(a)(2)(C)



- MOST EXECUTIVE BRANCH AGENCIES
- GOVERNMENT PRINTING OFFICE

NON-COVERED AGENCIES

5 U.S.C. § 2302(a)(2)(C)



- CENTRAL INTELLIGENCE AND OTHER INTELLIGENCE AGENCIES
- FEDERAL BUREAU OF INVESTIGATION (BUT LAW MANDATES ADMINISTRATIVE WHISTLEBLOWER PROTECTION PROCESS)
- GENERAL ACCOUNTING OFFICE
- GOVERNMENT CORPORATIONS AND FEDERAL AVIATION ADMINISTRATION (*EXCEPT* FOR ALLEGATIONS OF REPRISAL FOR WHISTLEBLOWING)
- U.S. POSTAL SERVICE AND POSTAL RATE COMMISSION

COVERED POSITIONS

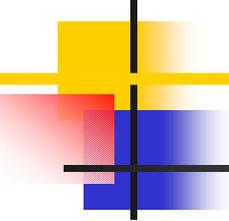
5 U.S.C. § 2302(a)(2)(B)

FOR ALL PROHIBITED PERSONNEL PRACTICES,
POSITIONS IN THE —

- COMPETITIVE SERVICE
- CAREER SES
- EXCEPTED SERVICE
- DEPARTMENT OF VETERANS AFFAIRS
APPOINTED UNDER TITLE 38, U.S. CODE
(MEDICAL CARE PERSONNEL)

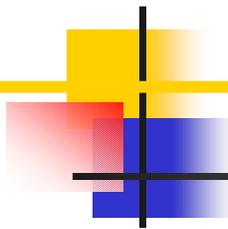
NON-COVERED POSITIONS

5 U.S.C. § 2302(a)(2)(B)

- 
- 
- CONFIDENTIAL, POLICY-DETERMINING, POLICY-MAKING, POLICY-ADVOCATING POSITIONS (SCHEDULE Cs)
 - POSITIONS EXCLUDED FROM COVERAGE BY THE PRESIDENT

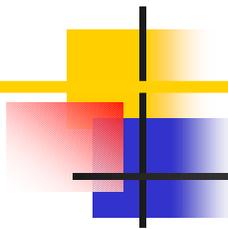
COVERED PERSONNEL ACTIONS

5 U.S.C. § 2302(a)(2)(A)

- 
- 
- APPOINTMENT OR PROMOTION
 - DETAIL, TRANSFER, REASSIGNMENT, REINSTATEMENT, RESTORATION, OR REEMPLOYMENT
 - CH. 75 ADVERSE ACTION, OR OTHER CORRECTIVE OR DISCIPLINARY ACTION
 - CH. 43 PERFORMANCE EVALUATION
 - DECISION ABOUT CERTAIN PAY, BENEFITS, AWARDS, EDUCATION, OR TRAINING
 - DECISION TO ORDER PSYCHIATRIC TESTING OR EXAMINATION
 - ANY OTHER SIGNIFICANT CHANGE IN DUTIES, RESPONSIBILITIES, OR WORKING CONDITIONS

PROHIBITED PERSONNEL PRACTICES

5 U.S.C. § 2302(b)(1)



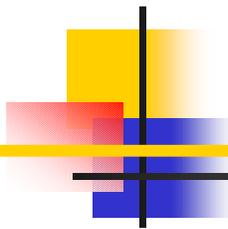
DISCRIMINATING FOR OR AGAINST ANY
EMPLOYEE OR APPLICANT ON A PROHIBITED
BASIS (*INCLUDING ON THE BASIS OF MARITAL
STATUS OR POLITICAL AFFILIATION*)

EXAMPLE:

SUPERVISOR JOE DECLINES TO RENEW
EMPLOYEE JANE'S TEMPORARY
APPOINTMENT BECAUSE HE DOES NOT
APPROVE OF HER MEMBERSHIP IN THE
SOCIALIST WORKERS PARTY

PROHIBITED PERSONNEL PRACTICES: OSC DEFERRAL POLICY

5 U.S.C. § 2302(b)(1); 5 C.F.R. § 1810.1

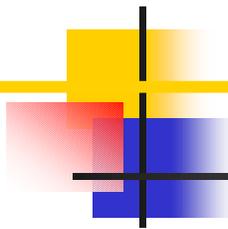


ALTHOUGH DISCRIMINATION IS A PROHIBITED PERSONNEL PRACTICE, OSC DEFERS THE FOLLOWING ALLEGATIONS OF DISCRIMINATION TO AGENCY AND EEOC DISCRIMINATION COMPLAINT PROCESSES:

- RACE
- COLOR
- RELIGION
- SEX
- NATIONAL ORIGIN
- AGE
- HANDICAP

PROHIBITED PERSONNEL PRACTICES

5 U.S.C. § 2302(b)(2)



SOLICITING OR CONSIDERING IMPROPER
EMPLOYMENT RECOMMENDATIONS OR
STATEMENTS

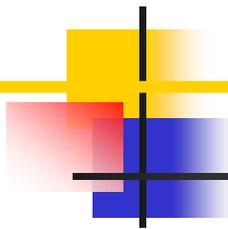
(RECOMMENDATIONS OR STATEMENTS NOT BASED
UPON JOB QUALIFICATIONS, CHARACTER,
PERFORMANCE OR OTHER RELEVANT MATTERS)

EXAMPLE:

SELECTING OFFICIAL JOE HIRES APPLICANT
JACK BASED ON THE RECOMMENDATION OF
SENATOR SMITH, WHO DOES NOT KNOW
ANYTHING ABOUT EMPLOYEE JACK'S
QUALIFICATIONS

PROHIBITED PERSONNEL PRACTICES

5 U.S.C. § 2302(b)(3)



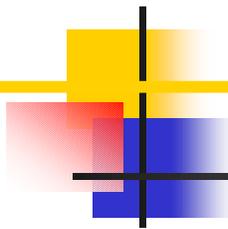
COERCING POLITICAL ACTIVITY, OR TAKING
REPRISAL FOR REFUSAL TO ENGAGE IN
POLITICAL ACTIVITY

EXAMPLE:

SUPERVISOR JANE THREATENS TO TAKES AWAY
SIGNIFICANT JOB DUTIES FROM EMPLOYEE
JACK IF HE DOES NOT AGREE TO ATTEND A
POLITICAL RALLY BEING ORGANIZED BY THE
HEAD OF THE AGENCY

PROHIBITED PERSONNEL PRACTICES

5 U.S.C. § 2302(b)(4)



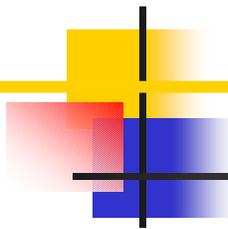
DECEIVING OR WILFULLY OBSTRUCTING
ANYONE FROM COMPETITION FOR EMPLOYMENT

EXAMPLE:

SUPERVISOR JOE, LOCATED IN
HEADQUARTERS, ORDERS THAT NO
VACANCY ANNOUNCEMENTS BE POSTED IN
THE FIELD OFFICE WHERE EMPLOYEE JACK
WORKS, BECAUSE JACK IS A DISABLED
VETERAN, WHO WOULD BLOCK THE
SELECTION OF JOE'S PREFERRED
CANDIDATE

PROHIBITED PERSONNEL PRACTICES

5 U.S.C. § 2302(b)(5)



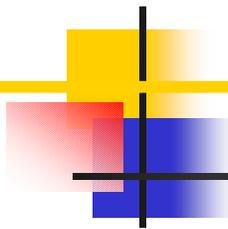
INFLUENCING WITHDRAWAL FROM
COMPETITION IN ORDER TO IMPROVE OR
INJURE EMPLOYMENT PROSPECTS OF ANOTHER

EXAMPLE:

SUPERVISOR JANE, IN AN EFFORT TO
IMPROVE EMPLOYEE JOE'S CHANCES TO
BE SELECTED, TELLS EMPLOYEE JACK — A
QUALIFIED EMPLOYEE — THAT HE
SHOULDN'T BOTHER APPLYING FOR A
POSITION BECAUSE HE IS UNLIKELY TO
BE SELECTED

PROHIBITED PERSONNEL PRACTICES

5 U.S.C. § 2302(b)(6)



GIVING AN UNAUTHORIZED PREFERENCE OR
ADVANTAGE TO IMPROVE OR INJURE THE
PROSPECTS OF ANY PARTICULAR PERSON FOR
EMPLOYMENT

EXAMPLE:

AN AGENCY POSTS VACANCY
ANNOUNCEMENTS IN REMOTE DUTY
STATIONS THAT ARE BOGUS, FOR
PURPOSES OF DISCOURAGING
COMPETITION, AND STEERS PREFERRED
APPLICANTS TO THOSE ANNOUNCEMENTS

UNAUTHORIZED PREFERENCE OR ADVANTAGE

(cont'd)

5 U.S.C. § 2302(b)(6)

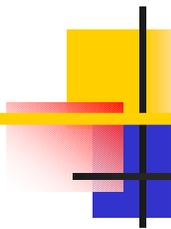
COMMON MISCONCEPTIONS:

AN UNAUTHORIZED PREFERENCE IS MORE THAN A PRECONCEIVED IDEA THAT ONE PERSON MAY BE THE BEST SELECTEE FOR A PARTICULAR POSITION ("PRESELECTION"). IT REQUIRES —

- THE GRANTING OF SOME ILLEGAL ADVANTAGE
- AN INTENTIONAL AND PURPOSEFUL MANIPULATION OF THE SYSTEM TO INSURE THAT ONE PERSON IS FAVORED AND ANOTHER PERSON IS DISADVANTAGED

UNAUTHORIZED PREFERENCE OR ADVANTAGE *(cont'd)*

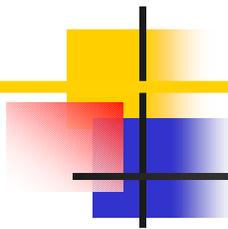
5 U.S.C. § 2302(b)(6)



IT IS NOT UNLAWFUL FOR MANAGEMENT TO
SELECT THE CANDIDATE IT HAD IN MIND AT
THE TIME A VACANCY ANNOUNCEMENT WAS
POSTED, SO LONG AS THE SELECTION
FOLLOWED AN OPEN COMPETITION AND IS
OTHERWISE JUSTIFIABLE

PROHIBITED PERSONNEL PRACTICES

5 U.S.C. § 2302(b)(7)



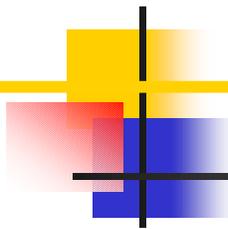
ENGAGING IN NEPOTISM (AGENCY OFFICIAL APPOINTS, PROMOTES, OR ADVOCATES THE APPOINTMENT OR PROMOTION OF A RELATIVE WITHIN THE SAME AGENCY)

EXAMPLE:

SECOND-LEVEL SUPERVISOR JANE RECOMMENDS THAT FIRST-LEVEL SUPERVISOR JOE HIRE HER FIRST COUSIN, MARY, WHO HAS APPLIED FOR A VACANCY

PROHIBITED PERSONNEL PRACTICES

5 U.S.C. § 2302(b)(8)



TAKING, FAILING TO TAKE, OR THREATENING
TO TAKE OR FAIL TO TAKE PERSONNEL ACTION
BECAUSE OF WHISTLEBLOWER DISCLOSURES

EXAMPLE:

SUPERVISOR JOE DIRECTS THE GEOGRAPHIC
REASSIGNMENT OF EMPLOYEE JACK BECAUSE
JACK REPORTED JOE'S MISUSE OF A
GOVERNMENT VEHICLE TO THE AGENCY'S
INSPECTOR GENERAL

PROHIBITED PERSONNEL PRACTICES

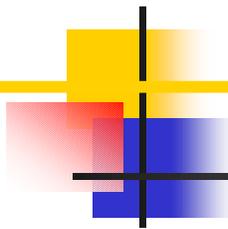
5 U.S.C. § 2302(b)(9)

TAKING, FAILING TO TAKE, OR THREATENING TO TAKE
OR FAIL TO TAKE PERSONNEL ACTION FOR —

- EXERCISE OF APPEAL, COMPLAINT, OR GRIEVANCE RIGHTS
- TESTIMONY OR OTHER ASSISTANCE TO PERSON EXERCISING SUCH RIGHTS
- COOPERATION WITH OR DISCLOSURES TO THE SPECIAL COUNSEL OR AN INSPECTOR GENERAL
- REFUSAL TO OBEY AN ORDER THAT WOULD REQUIRE VIOLATION OF LAW

PROHIBITED PERSONNEL PRACTICES

5 U.S.C. § 2302(b)(9) *(cont'd)*



EXAMPLE:

SUPERVISOR JANE FAILS TO SELECT

EMPLOYEE JACK FOR A POSITION,

BECAUSE JACK FILED SEVERAL

GRIEVANCES AGAINST HIS PRIOR

SUPERVISOR

PROHIBITED PERSONNEL PRACTICES

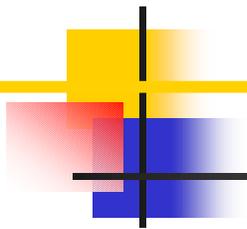
5 U.S.C. § 2302(b)(10)

DISCRIMINATION BASED ON CONDUCT NOT
ADVERSE TO JOB PERFORMANCE

(INCLUDES DISCRIMINATION BASED ON
SEXUAL ORIENTATION)

EXAMPLE:

SUPERVISOR JOE, WHO DISAPPROVES OF
HOMOSEXUALITY, REASSIGNS JACK TO A
DIFFERENT OFFICE, BECAUSE HE DISCOVERED
THAT JACK HAS A LIVE-IN MALE PARTNER



PROHIBITED PERSONNEL PRACTICES

5 U.S.C. § 2302(b)(11)



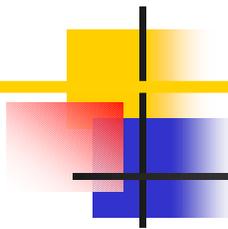
TAKING OR FAILING TO TAKE, RECOMMEND, OR
APPROVE A PERSONNEL ACTION IN VIOLATION
OF A VETERAN'S PREFERENCE REQUIREMENT

EXAMPLE:

SUPERVISOR JANE HIRED EMPLOYEE JACK
WITHOUT CONSIDERING VETERAN JENNIFER,
WHO WAS INCLUDED ON THE LIST OF ELIGIBLE
EMPLOYEES

PROHIBITED PERSONNEL PRACTICES

5 U.S.C. § 2302(b)(12)



TAKING OR FAILING TO TAKE PERSONNEL ACTION, IN VIOLATION OF A LAW, RULE, OR REGULATION THAT IMPLEMENTS OR DIRECTLY CONCERNS A MERIT SYSTEM PRINCIPLE

EXAMPLE:

SUPERVISOR JANE TERMINATES THE PROBATIONARY APPOINTMENT OF EMPLOYEE JACK BECAUSE OF JACK'S LETTER TO THE EDITOR CRITICIZING AFFIRMATIVE ACTION— A VALID EXERCISE OF FIRST AMENDMENT RIGHTS, A LAW IMPLEMENTING A MERIT SYSTEM PRINCIPLE

WHISTLEBLOWER PROTECTION

"PUBLICITY IS JUSTLY COMMENDED AS A
REMEDY FOR SOCIAL AND INDUSTRIAL
DISEASES. SUNLIGHT IS SAID
TO BE THE BEST OF
DISINFECTANTS; ELECTRIC
THE MOST EFFICIENT
POLICEMAN."

*L. BRANDEIS, "OTHER PEOPLE'S
MONEY" (1933)*



WHISTLEBLOWER PROTECTION

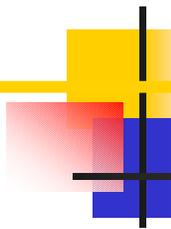
5 U.S.C. § 2302(b)(8)

AN EMPLOYEE WITH PERSONNEL AUTHORITY MAY *NOT* —

- TAKE, FAIL TO TAKE, OR THREATEN TO TAKE OR FAIL TO TAKE
- A PERSONNEL ACTION AGAINST AN EMPLOYEE OR APPLICANT
- BECAUSE OF ANY DISCLOSURE OF INFORMATION TO ANY PERSON
- WHICH THE EMPLOYEE OR APPLICANT REASONABLY BELIEVES
- EVIDENCES A VIOLATION OF ANY LAW, RULE OR REGULATION; GROSS MISMANAGEMENT; A GROSS WASTE OF FUNDS; AN ABUSE OF AUTHORITY; OR A SUBSTANTIAL AND SPECIFIC DANGER TO PUBLIC HEALTH AND SAFETY

ELEMENTS OF PROOF: REPRISAL FOR WHISTLEBLOWING

5 U.S.C. §§ 1214(b)(4)(A)-(B), 1221(e)



MUST SHOW –

- PROTECTED DISCLOSURE OF INFORMATION UNDER 5 U.S.C. § 2302 (b)(8)
- PERSONNEL ACTION TAKEN NOT TAKEN , OR THREATENED
- ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF THE PROTECTED DISCLOSURE
- PROTECTED DISCLOSURE WAS A CONTRIBUTING FACTOR IN THE PERSONNEL ACTION

PROTECTED WHISTLEBLOWER DISCLOSURES

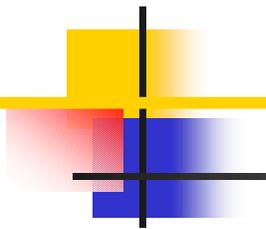
5 U.S.C. § 2302(b)(8)

- VIOLATION OF LAW, RULE OR REGULATION
- SUBSTANTIAL AND SPECIFIC DANGER TO PUBLIC HEALTH OR SAFETY
- GROSS WASTE OF FUNDS
(MORE THAN A DEBATABLE EXPENDITURE)

PROTECTED WHISTLEBLOWER DISCLOSURES

(cont'd)

5 U.S.C. § 2302(b)(8)



- GROSS MISMANAGEMENT

MORE THAN *DE MINIMIS* WRONGDOING OR NEGLIGENCE — AN ACTION THAT CREATES A RISK OF SIGNIFICANT ADVERSE IMPACT ON THE ACCOMPLISHMENT OF AN AGENCY'S MISSION

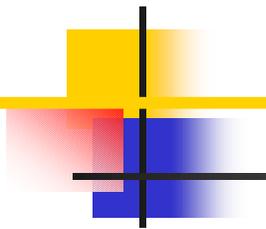
- ABUSE OF AUTHORITY

AN ARBITRARY OR CAPRICIOUS EXERCISE OF POWER THAT INJURES ANOTHER, OR BENEFITS THE ABUSER OR OTHERS

PROTECTED WHISTLEBLOWER DISCLOSURES

(cont'd)

5 U.S.C. § 2302(b)(8)

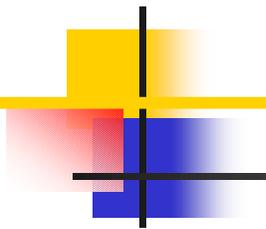


- GENERALLY PROTECTED WHEN MADE TO ANY PERSON (EXCEPT THE WRONGDOER)
- NEED NOT BE ACCURATE TO BE PROTECTED
- PROTECTED IF EMPLOYEE HAS A REASONABLE BELIEF THAT IT IS TRUE — TEST IS BOTH OBJECTIVE AND SUBJECTIVE

PROTECTED WHISTLEBLOWER DISCLOSURES

(cont'd)

5 U.S.C. § 2302(b)(8)



- NO REQUIREMENT THAT EMPLOYEE GO THROUGH CHAIN OF COMMAND
- WHISTLEBLOWER'S PERSONAL MOTIVATION DOES NOT AFFECT REASONABLENESS OF A DISCLOSURE
- EMPLOYEE OR APPLICANT IS PROTECTED IF EMPLOYER MISTAKENLY BELIEVES HE OR SHE IS A WHISTLEBLOWER

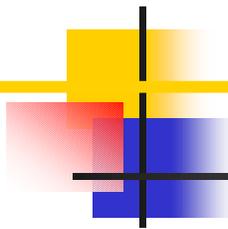
PROTECTED WHISTLEBLOWER DISCLOSURES

(cont'd)

5 U.S.C. § 2302(b)(8)

DISCLOSURE NOT PROTECTED (UNLESS MADE TO THE SPECIAL COUNSEL OR INSPECTORS GENERAL), WHERE DISCLOSURE IS —

- PROHIBITED BY LAW, *OR*
- REQUIRED BY EXECUTIVE ORDER TO BE SECRET FOR NATIONAL SECURITY OR FOREIGN AFFAIRS REASONS



CORRECTIVE ACTION: WHISTLEBLOWER REPRISAL MATTERS

5 U.S.C. §§ 1214(b)(4)(B), 1221(e)(1)



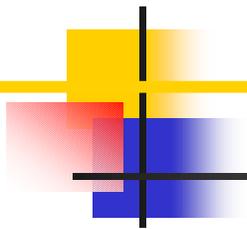
CAN BE OBTAINED *IF* —

- DISCLOSURE OF INFORMATION WAS A CONTRIBUTING FACTOR IN A PERSONNEL ACTION

UNLESS

- AGENCY SHOWS BY CLEAR AND CONVINCING EVIDENCE THAT IT WOULD HAVE TAKEN THE SAME PERSONNEL ACTION IN THE ABSENCE OF THE DISCLOSURE

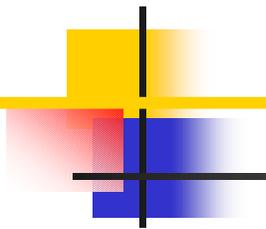
CONTRIBUTING FACTOR



ANY FACTOR WHICH ALONE OR IN CONNECTION WITH OTHERS TENDS TO AFFECT IN ANY WAY THE OUTCOME OF THE PERSONNEL ACTION AT ISSUE

- CAN BE ESTABLISHED BY KNOWLEDGE / TIMING ALONE
- OFTEN ESTABLISHED BY CIRCUMSTANTIAL EVIDENCE

CLEAR AND CONVINCING EVIDENCE (AGENCY DEFENSE)

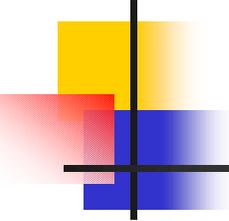


- AGENCY DEFENDS PERSONNEL ACTION BY SHOWING — BY *CLEAR AND CONVINCING EVIDENCE* — THAT IT WOULD HAVE TAKEN THE SAME ACTION WITHOUT THE DISCLOSURE.

- FACTORS:
 - STRENGTH OF THE EVIDENCE IN SUPPORT OF THE PERSONNEL ACTION

 - EXISTENCE AND STRENGTH OF MOTIVE TO RETALIATE

 - TREATMENT OF SIMILAR EMPLOYEES WHO ARE NOT WHISTLEBLOWERS



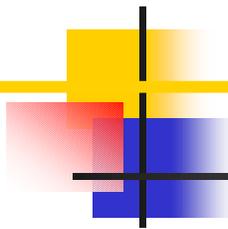
Stays Of Personnel Actions

OSC CAN SEEK DELAY OF PERSONNEL ACTION
("STAY") THROUGH —

- NEGOTIATION WITH AGENCY
(INFORMAL)
- PETITION TO MERIT SYSTEMS
PROTECTION BOARD (FORMAL)

DISCIPLINARY ACTION

5 U.S.C. § 1215



MAY BE SOUGHT BY THE OSC FOR –

- PROHIBITED PERSONNEL PRACTICES
- HATCH ACT VIOLATIONS
- OTHER VIOLATIONS OF CIVIL SERVICE LAW , RULE , OR REGULATION

DISCIPLINARY ACTION

5 U.S.C. § 1215

MAY BE SOUGHT BY THE OSC FROM —

- THE MSPB
- AGENCY HEADS (FOR UNIFORMED SERVICE MEMBERS AND CONTRACTORS)
- THE PRESIDENT (FOR MOST PRESIDENTIAL APPOINTEES)

DISCIPLINARY ACTION

5 U.S.C. § 1215

POSSIBLE PENALTIES –

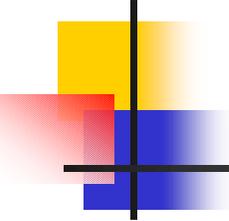
- REMOVAL, REDUCTION IN GRADE, SUSPENSION, OR REPRIMAND
- DEBARMENT FROM FEDERAL EMPLOYMENT (UP TO FIVE YEARS)
- CIVIL PENALTY (UP TO \$1,100)

DISCIPLINARY ACTION

5 U.S.C. § 1215

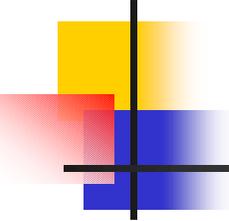
RIGHTS OF CHARGED EMPLOYEE INCLUDE –

- OPPORTUNITY TO RESPOND
- LEGAL OR OTHER REPRESENTATION
- HEARING BEFORE AN MSPB
ADMINISTRATIVE LAW JUDGE
- WRITTEN DECISION



How OSC Processes Complaints

- Complaints Examining Unit
 - Staffed by personnel management specialists and attorneys
 - Receive and review complaints to determine whether they show that PPP may have been committed
 - 1292 complaints received in FY 2001



How OSC Processes Complaints

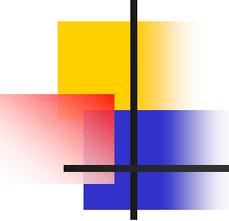
(Complaints Examining Cont'd)

- Reasons for closure in CEU:
 - OSC lacks jurisdiction (or eeo matter subject to deferral policy)
 - Complainant's allegations, even if true, would not constitute a ppp
 - Insufficient evidence to infer that a ppp may have been committed

How OSC Processes Complaints

(Complaints Examining Cont'd)

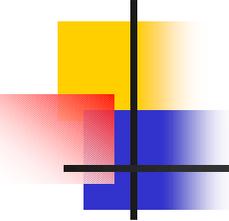
- Procedure When CEU Closes Complaint
 - Complainant receives preliminary determination letter, specifying reasons for proposed closure.
 - Complainant has 16 days to file a written response.
 - Complainant provided an opportunity for teleconference with examiner.
 - Whistleblower receives right to file IRA Letter.



How OSC Processes Complaints

(Complaints Examining Cont'd)

- If CEU determines that ppp may have been committed, the complaint is referred to one of OSC's three I&P (Investigation and Prosecution) Divisions
- On average, CEU refers for investigation about 30% of the whistleblower complaints over which OSC has jurisdiction
- On average CEU refers about 20% of the other ppp complaints over which OSC has jurisdiction

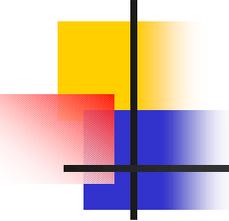


How OSC Processes Complaints

ALTERNATIVE DISPUTE RESOLUTION (ADR)

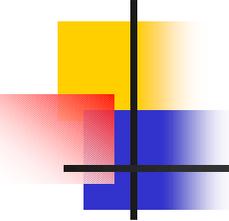
UNIT:

- IN SELECTED CASES, IN LIEU OF REFERRAL FOR INVESTIGATION, ADR UNIT OFFERS VOLUNTARY MEDIATION PROGRAM TO COMPLAINANT AND EMPLOYING AGENCY
- IF CASE SETTLES IN MEDIATION, CASE IS CLOSED; IF CASE IS NOT RESOLVED, IT IS FORWARDED TO I&P DIVISION



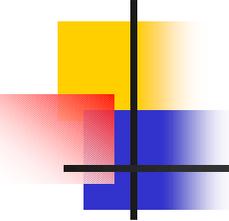
How OSC Processes Complaints

- Referral to I & P Division
 - Three I & P Divisions
 - Staffed by Attorneys and Investigators
 - Gather evidence and assist SC in determining whether there exist reasonable grounds to believe a ppp has been committed, and, if so, what is the appropriate remedy.



How OSC Processes Complaints (I & P Divisions)

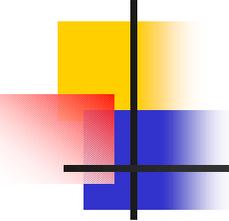
- CONDUCT ON-SITE INVESTIGATIONS.
- INTERVIEW WITNESSES AND GATHER DOCUMENTS.
- CONDUCT SETTLEMENT NEGOTIATIONS IN APPROPRIATE CASES.
- SEEK FORMAL AND INFORMAL STAYS.
- DRAFT PPP REPORTS; PROSECUTE CASES. WHERE VOLUNTARY COMPLIANCE NOT ACHIEVED.



How OSC Processes Complaints

(I & P Divisions)

- In the vast majority of cases in which SC determines reasonable grounds exist, agencies agree voluntarily to provide remedy.
- In FY 2000, for example, OSC filed four enforcement actions and two formal requests stays with the MSPB; OSC obtained corrective action informally in 52 ppp matters (20-25% of the cases referred for investigation), including 14 disciplinary actions and 50 individual corrective actions.

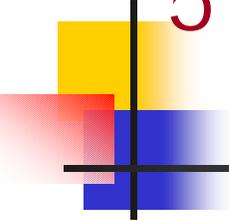


OSC AND OIGS

- OSC frequently receives referrals from IGs.
- OSC may conduct parallel investigation of retaliation complaint (OSC may stay its investigation if IG matter is criminal).
- OSC and IGs cooperate and share information when parallel investigations going on.

OSC Disclosure Unit

5 U.S.C. § 1213



**SAFE CHANNEL FOR DISCLOSURES BY
FEDERAL EMPLOYEES, FORMER EMPLOYEES,
AND APPLICANTS OF ANY INFORMATION
EVIDENCING:**

- **A VIOLATION OF ANY LAW, RULE, OR REGULATION**
- **GROSS MISMANAGEMENT**
- **A GROSS WASTE OF FUNDS**
- **AN ABUSE OF AUTHORITY**
- **A SUBSTANTIAL AND SPECIFIC DANGER TO PUBLIC HEALTH AND SAFETY**

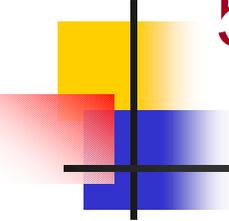
OSC Disclosure Unit

5 U.S.C. § 1213 *(Cont'd)*

- NO DISCLOSURE OF WB'S IDENTITY WITHOUT CONSENT
- AFTER "SUBSTANTIAL LIKELIHOOD" DETERMINATION, SPECIAL COUNSEL AUTHORIZED TO DIRECT AGENCY INVOLVED TO —
 - INVESTIGATE ALLEGATION(S)
 - REPORT ON RESULTS AND CORRECTIVE ACTION TO OSC WITHIN 60 DAYS

OSC Disclosure Unit

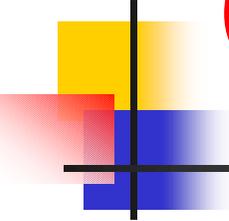
5 U.S.C. § 1213 *(Cont'd)*



- When report received, OSC forwards to WB for comment.
- OSC reviews report and comments to determine whether report appears reasonable.
- OSC transmits report to President and Congress—report is a public document.

OSC Disclosure Unit

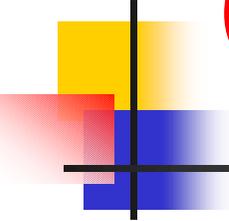
(Role of IGs)



- OSC may request that IG assist in making substantial likelihood determination—did IG already investigate matter?
- Agency heads frequently task IG's office with responsibility for conducting investigation. IGs need to be aware of statutory time limits and mandatory nature of assignment.

OSC Disclosure Unit

(Role of IGs)



- OSC may refer anonymous disclosures to IG office.
- IG should probably not refer cases it does not plan to investigate to DU—OSC directs agency to investigate only when substantial likelihood exists.
- IG should be aware that report will become public.

OSC WEB SITE

([HTTP://WWW.OSC.GOV](http://www.osc.gov))

Introduction to the OSC
Prohibited Personnel Practices
Whistleblower Disclosures
Political Activity (Hatch Act)
USERRA
Alternative Dispute Resolution
Press Releases
Freedom of Information Act
Reading Room
Forms and Publications
OSC Contacts and Other Links
OSC Employment Opportunities

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U.S. OFFICE OF SPECIAL COUNSEL



PROTECTING FEDERAL WHISTLEBLOWERS
 RECEIVING WHISTLEBLOWER DISCLOSURES
 INVESTIGATING AND PROSECUTING PROHIBITED PERSONNEL PRACTICES
 ENFORCING THE HATCH ACT

1730 M Street N.W., Suite 300
 Washington, D.C. 20036-4505

Elaine Kaplan
 Special Counsel

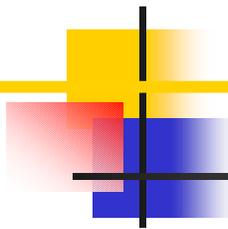
**NEW SECTION: ALTERNATIVE DISPUTE RESOLUTION -
 Information on OSC's Mediation Program**

A MESSAGE FROM ELAINE KAPLAN, SPECIAL COUNSEL

Welcome to the U.S. Office of Special Counsel (OSC) homepage. OSC is an independent federal investigative and prosecutorial agency. Our primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing. OSC also serves as a safe and secure channel for federal workers who wish to disclose violations of laws, gross mismanagement or waste of funds, abuse of authority, and a specific danger to the public health and safety. In addition, OSC enforces and provides advisory opinions regarding the Hatch Act, and protects the rights of federal employees, military veterans and reservists under the Uniformed Services Employment and Reemployment Rights Act of 1994.

Information about all of OSC's functions, including how to file a complaint, make a protected disclosure, or receive a Hatch Act advisory opinion, can be located within this site. We hope that you will find our site useful and informative, and we invite your comments and suggestions.

PHONE / E-MAIL CONTACTS OFFICE OF SPECIAL COUNSEL



COMPLAINTS : (202) 653-7188

*(PROHIBITED PERSONNEL
PRACTICE, HATCH ACT,
OTHERS)* (800) 872-9855

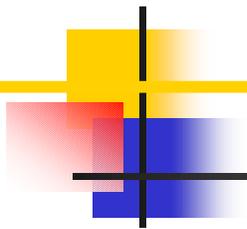
DISCLOSURE HOTLINE : (202) 653-9125
(800) 572-2249

HATCH ACT UNIT : (800) 85-HATCH
(202) 653-7143
hatchact@osc.gov

PUBLIC INFORMATION : (202) 653-7984

OSC SPEAKERS /
OUTREACH : (202) 653-6006

MAIL CONTACTS OFFICE OF SPECIAL COUNSEL



U . S . OFFICE OF SPECIAL COUNSEL

1730 M STREET , N W . (SUITE 300)

WASHINGTON , DC 20036-4505